

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GUY M. RASMUSSEN,

Petitioner,

v.

RICHARD MORGAN,

Respondent.

Case No. C04-5448RJB

ORDER DENYING CERTIFICATE
OF APPEALABILITY

This matter comes before the court on the petitioner's 28 U.S.C. § 2254 Application for Certificate of Appealability. Dkt. 42. The court must consider whether to grant or deny the petitioner a Certificate of Appealability. *See* 28 U.S.C. 2253(c)(3). The court has reviewed the record herein.

PROCEDURAL HISTORY

On October 20, 2006, U.S. Magistrate Judge J. Kelley Arnold issued a Report and Recommendation, concluding that certain of petitioner's habeas claims were unexhausted and that the remainder of the claims, which were reviewed on the merits, were without merit. Dkt. 38. On November 17, 2006, the court adopted the Report and Recommendation and denied the petition for writ of habeas corpus. Dkt.40. Petitioner has now appealed to the U.S. Court of Appeals for the Ninth Circuit, and has filed an application for a certificate of appealability. Dkt. 42.

1 STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY

2 The district court should grant an application for a Certificate of Appealability only if the
3 petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §
4 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner
5 must make a showing that reasonable jurists could debate whether, or agree that, the petition should
6 have been resolved in a different manner or that the issues presented were adequate to deserve
7 encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (quoting
8 *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When the court denies a claim on procedural
9 grounds, the petitioner must show that jurists of reason would find it debatable whether the petition
10 states a valid claim of the denial of a constitutional right and that jurists of reason would find it
11 debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 120
12 S.Ct. at 1604.

13 DISCUSSION

14 The Report and Recommendation concluded that claims 3, 5, 8, 11, 16, 18 and 19 were
15 unexhausted and procedurally barred. In the order adopting the Report and Recommendation, this
16 court concurred with the magistrate judge, and noted that, even assuming petitioner had exhausted
17 claim 8, he was not prejudiced by the trial court’s denial, during the penalty phase of his proceedings,
18 of his motion to stay. Claims 3, 5, 8, 11, 16, 18 and 19 were therefore dismissed on procedural
19 grounds. There is nothing in the record that would support a conclusion that jurists of reason would
20 find it debatable whether these issues state valid claims of the denial of a constitutional right and that
21 jurists of reason would find it debatable whether this court was correct in its procedural ruling.

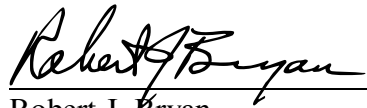
22 The Report and Recommendation reviewed claims 1, 2, 6, 7, 9, 10, 12, 13, and 15 on the
23 merits. Upon review of the Report and Recommendation, this court reviewed claim 8 on the merits
24 as well. The court carefully reviewed the record and determined that these claims did not warrant
25 habeas relief. In his request for a Certificate of Appealability, petitioner raises the same issues that

1 were carefully reviewed by the magistrate judge, and by this court on *de novo* review. Petitioner has
2 not shown that reasonable jurists could debate whether, or agree that, the petition should have been
3 resolved in a different manner or that the issues presented were adequate to deserve encouragement
4 to proceed further.

5 Accordingly, it is hereby **ORDERED** that petitioner's 28 U.S.C. § 2254 Application for
6 Certificate of Appealability (Dkt. 42) is **DENIED**.

7 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to
8 any party appearing *pro se* at said party's last known address.

9 DATED this 5th day of January, 2007.

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12 Robert J. Bryan
13 United States District Judge
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